



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 52 and 81**

**[EPA-R08-OAR-2019-0340; FRL-9999-29-Region 8]**

#### **Designation of Areas for Air Quality Planning Purposes; Montana; Redesignation Request and Associated Maintenance Plan for East Helena SO<sub>2</sub> Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the State of Montana's request to redesignate the East Helena sulfur dioxide (SO<sub>2</sub>) nonattainment area to attainment for the 1971 primary and secondary SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS). The EPA is also approving Montana's maintenance plan which provides for continued attainment of the 1971 primary and secondary SO<sub>2</sub> NAAQS in the East Helena area. The EPA is taking these actions pursuant to section 110 of the Clean Air Act (CAA). This final rulemaking action includes the EPA's determination that the East Helena SO<sub>2</sub> nonattainment area attains the 1971 primary and secondary SO<sub>2</sub> NAAQS. The emissions offset and highway funding sanctions were imposed on the State of Montana for the East Helena SO<sub>2</sub> nonattainment area because the State did not submit a required attainment demonstration for the 1971 secondary SO<sub>2</sub> NAAQS. Because the area is being redesignated for this standard and is no longer obligated to submit an attainment demonstration, the sanctions will no longer apply as of the effective date of this final rule.

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2019-0340. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Adam Clark, (303) 312-7104, [clark.adam@epa.gov](mailto:clark.adam@epa.gov), or Clayton Bean, (303) 312-6143, [bean.clayton@epa.gov](mailto:bean.clayton@epa.gov), Air and Radiation Division, US EPA, Region 8, Mail-code 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado, 80202-1129.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

The EPA designated a portion of East Helena, Montana, as nonattainment for the 1971 primary and secondary SO<sub>2</sub> NAAQS on March 3, 1978, based on monitored violations of the SO<sub>2</sub> NAAQS (see 43 FR 8962).

On October 26, 2018, the State of Montana submitted to the EPA a request for redesignation of the East Helena 1971 SO<sub>2</sub> nonattainment area to attainment and a SIP revision containing a maintenance plan for the area.

On July 17, 2019, the EPA published a notice of proposed rulemaking (NPRM) which proposed to approve Montana’s October 26, 2018 submittal (see 84 FR 34090). Specifically, the

EPA proposed to take the following separate but related actions: (1) Redesignate the East Helena SO<sub>2</sub> nonattainment area to attainment for the primary and secondary 1971 SO<sub>2</sub> NAAQS, based on our determination that the State's request meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA for these standards; and (2) approve Montana's plan for maintaining these NAAQS in the East Helena area for the first ten years following redesignation to attainment, based on our determination that this maintenance plan meets the requirements of section 175A of the CAA. The details of Montana's submittal and the rationale for the EPA's proposed actions are explained in detail in the NPRM and will not be restated here. The EPA did not receive any public comments on the NPRM.

## **II. Final Action**

The EPA is taking final actions to approve the redesignation request and maintenance plan submitted by the State of Montana on October 26, 2018 for the East Helena 1971 primary and secondary SO<sub>2</sub> NAAQS nonattainment area. Approval of the redesignation request will change the official designation of the East Helena SO<sub>2</sub> nonattainment area to attainment for the 1971 primary and secondary SO<sub>2</sub> NAAQS.

The EPA's redesignation of the East Helena SO<sub>2</sub> nonattainment area to attainment also alleviates the requirement that the State submit an attainment SIP for the 1971 secondary SO<sub>2</sub> NAAQS. Because upon redesignation the State is no longer required to submit the plan requirements that resulted in application of the sanctions, the sanctions will terminate as of the effective date of this action.<sup>1</sup>

## **III. Statutory and Executive Order Reviews**

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<sup>1</sup> Due to Montana not submitting an attainment SIP for the 1971 secondary SO<sub>2</sub> NAAQS, highway sanctions and 2:1 emissions offset sanctions were imposed on January 19, 1996 and July 19, 1995 respectively. For more information please see our July 17, 2019 NPRM at 84 FR 34090.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## **List of Subjects**

### **40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

### **40 CFR Part 81**

Environmental protection, Air pollution control, National Parks, Wilderness areas.

Dated: September 4, 2019.

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Gregory Sopkin,  
Regional Administrator,  
Region 8.

40 CFR parts 52 and 81 are amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart BB – Montana**

2. Section 52.1370(e), under “(4) Lewis and Clark County,” is amended by adding the entry “East Helena 1971 SO<sub>2</sub> Maintenance Plan” after the entry “Sulfur Dioxide NAAQS – Plan Summary, Plan Summary, East Helena Sulfur Dioxide (SO<sub>2</sub>) Attainment Plan” to read as follows:

**§52.1370 Identification of plan.**

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(e) \* \* \*

Title/Subject	State effective date	Notice of final rule date	NFR Citation
* * * * *			
(4) Lewis and Clark County			
* * * * *			
East Helena 1971 SO <sub>2</sub> Maintenance Plan		[Insert date of publication in the <b>Federal Register</b> ]	[Insert <b>Federal Register</b> citation]
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3. Section 52.1398 is amended by adding paragraphs (c) and (d) to read as follows:

**§52.1398 Control strategy: Sulfur dioxide.**

\* \* \* \* \*

(c) *Redesignation to attainment.* The EPA has determined that the East Helena sulfur dioxide (SO<sub>2</sub>) nonattainment area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 1971 primary and secondary SO<sub>2</sub> NAAQS. The EPA is therefore redesignating the East Helena 1971 SO<sub>2</sub> nonattainment area to attainment.

(d) *Maintenance plan.* The EPA is approving the maintenance plan for the East Helena nonattainment area for the 1971 SO<sub>2</sub> NAAQS submitted by the State of Montana on October 26, 2018.

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

4. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

**Subpart C – Section 107 Attainment Status Designations**

5. In § 81.327, the table entitled “Montana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)” is amended by revising the entry for “East Helena Area” to read as follows:

**§81.327 Montana.**

**Montana—1971 Sulfur Dioxide NAAQS (Primary and Secondary)**

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * * *				
East Helena Area				X



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[FR Doc. 2019-19576 Filed: 9/10/2019 8:45 am; Publication Date: 9/11/2019]